Natural Resources Board
Districts #2&3 Environmental Commission
100 Mineral Street, Suite 305
Springfield, VT 05156-3168

June 10, 2008

Peter Gregory
Two Rivers-Ottauquechee Regional Commission
3117 Rose Hill
Woodstock, VT 05091

RE: Jurisdictional Opinion 3-123, Pristine Mountain Springs, Inc., Stockbridge

Dear Mr. Gregory:

This is in response to your request for a jurisdictional opinion regarding whether the commercial use of a spring located within the Chalet Village subdivision is a substantial change to a pre-existing subdivision. It is my opinion that the creation and sale of the 1977 lot and additional use of the pre-existing water supply for Chalet Village as a commercial water source, is not and was not a substantial change to a pre-existing subdivision. Mr. Colton was required by deed to always provide water to the Chalet Water System prior to any other use of the water. Furthermore, even if Criterion 3 is also considered, no substantial change exists. There is no evidence of a negative effect on local water supplies. This opinion is based on the following:

The issue:

Is the commercial sale of water from the well that supplies water for a pre-existing subdivision, a substantial change to the pre-existing subdivision?

Background:

1. Mr. Giorgetti discovered a spring on his Stockbridge property in 1959. Mr. Giorgetti dug and piped the spring in what is the present site of the pump house.

2. Mr. Giorgetti later created the Chalet Village subdivision on that property in approximately 1967 by filing the plot plan with the Town of Stockbridge. The subdivision consisted of more than ten lots and internal roads.

3. In 1977, Mr. Giorgetti created a triangular lot comprising the easterly portion of Lot 1 and the westerly portion of Lot L of the Chalet Village along with the building on that triangular piece of land. On November 19, 1977, Ron Colton purchased the lot, which included the entire water system including the well, water leading from the pressure tank and to all lots located in Chalet Village. He also acquired all equipment used in the water operation. The deed required that he provide water to the chalets located in Chalet Village & the Stockbridge General Store.

4. Beginning in 1991, Ronald Colton has applied for and received several state permits for bulk water withdrawal including a Water Supply Division Interim Source permit to allow bulk water withdrawal for sale and a Public Water System Permit to Operate. He has obtained renewals for the permits.

5. The 1977 triangular lot was eventually deeded to Pristine Mountain Springs. Mr. Colton, acting on behalf of Pristine Mountain Springs, also purchased other parcels of land as well as easements between the original parcel and a 5.99 acre parcel. The 5.99 acre parcel of land owned by Pristine Mountain Springs is subject to Subdivision permit EC-3-1846, and it was not part of the Chalet Village subdivision. The total land owned or controlled by Pristine Mountain Springs is less than 10 acres.

6. In December 1995, Pristine Mountain Springs requested a jurisdictional opinion on whether an Act 250 permit was needed for construction on the 5.99 acre parcel of land. The December 1995 Project Review Sheet requested more information. The ruling stated, "This project could require ACT 250 approval if other lands served by the spring are involved. I need to see a copy of the easement agreement and site plans."

7. In response to that Project Review Sheet, Ralph Michael, P.E. and Ron Colton each wrote letters dated December 20, 1995 providing the District 3 Coordinator information concerning the land owned/controlled by Pristine Mountain Springs. In those letters, copies of deeds and easements were presented in conjunction with history of the lands involved. The original acquisition of the spring required a commitment to provide the subdivision with water. Land involved totals less than 10 acres. Mr. Colton also disclosed that he conveyed his entire interest in the water system and parcels to Pristine Mountain Springs of Vermont, Inc.

8. In a letter dated December 27, 1995, Robert Sanford, District 3 Coordinator, stated that an Act 250 permit was not required.

9. A December 20, 2007 letter from Jean Nicolai, State of Vermont's Water Supply Division, outlines some information for Chalet Village Water System and Pristine Mountain Springs.

A. Chalet Village Water System

i. Public community water system using a single source to serve 88 people through 31 connections.

ii. Owner is required under the 2004 Operating Permit to submit reports concerning the amount of water produced and daily disinfectant residual entering the distribution system.

iii. The violation history required no formal follow up proceedings.

B. Pristine Mountain Springs

i. Water that overflows is first distributed to Chalet Village Water System, and any overflow after that is pumped to Pristine Mountain Springs bulk water storage facility. Water is then pumped out of storage tanks and transported to bottling facilities.

ii. Unused water is sent to a pond nearby.

iii. Sanitary inspections resulted in no deficiencies.

iv. Operating permit is same as above. However, if owner ozonates bulk water, he must also report for the months he ozonates.

History on the Source provided by Nicolai:

i. Colton acquired in 1977 from the developer.

ii. The system was built in the 1960s prior to Water Supply Division regulation.

iii. Pristine Mountain Springs began in 1994, and only the overflow from the water source could be used by the company. Chalet Village takes precedence for water use.

10. Stockbridge has adopted both permanent subdivision and zoning bylaws.

Act 250 Rules and Law:

Act 250 Rule 2(C)(7) "substantial change" is defined as "any change in a pre-existing development or subdivision which may result in significant impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10).

Act 250 Rule 2(C)(9) "pre-existing subdivision" is defined as:

> [A]ny subdivision exempt under the regulations of the department of health in effect on January 1, 1970 or any subdivision which had a permit issued prior to June 1, 1970 under the board of health regulations, or had pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plans on file as of June 1, 1970 provided such permit was granted prior to August 1, 1970.

Act 250 Rule 19(E) Permits creating presumptions: In the event a subdivision or development is also subject to standards of or requires one or more permits, approvals or certifications from another state agency, such permits, approvals or certifications of compliance, when entered in the record pursuant to Rule 17(B), will create the following presumptions:

(3) That a sufficient supply of potable water is available:

(e) A public water system operating permit – Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. Section 1218, and rules adopted thereunder.

Under 10 V.S.A. §§6086 (a)(2)-(3) Criteria 2 Water Supply and 3 Existing Water Supply, the commission must determine that the subdivision will have sufficient water available for the reasonably foreseeable needs of the subdivision and will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

10 V.S.A.§ 6001(19) defines "subdivision" in part as a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years.

Discussion:

In approximately 1967, Mr. Giorgetti created a subdivision named Chalet Village. In 1977, he created an additional lot by shaving off land from two lots in that subdivision. This triangular parcel contained a natural spring discovered in approximately 1959 by Mr. Giorgetti. Upon its discovery, Mr. Giorgetti piped the spring and used it to supply his subdivision with water. Mr. Colton subsequently purchased this triangular lot with the spring, and therefore, he purchased the rights to the Chalet Village Water System. The deed for this purchase contains language requiring Mr. Colton to supply Chalet Village as well as several neighboring properties with water. This requirement is reinforced by language in some of the State permits requiring that water supply to the Chalet Village Water System take precedent over any bulk withdrawal of water for Pristine Mountain Springs.

In order to determine whether there was a substantial change to a pre-existing subdivision, there are two scenarios to consider. The first question to address is whether the further subdividing of lots in a pre-existing subdivision is a substantial change to that subdivision. Next, it must be determined if use of the overflow from that spring is a substantial change to a pre-existing subdivision.

a) Further Subdivision of Lots

The subdivision of two lots into three alone would not trigger Act 250 jurisdiction as there are fewer than 10 lots created in a town with permanent zoning and subdivision bylaws. Therefore, one must determine if such subdivision would result in a significant impact on the pre-existing subdivision. The creation of a lot containing the spring and therefore, the rights to the Chalet Village Water System, would not, in and of itself have a significant impact on any criteria under Act 250. There was simply a change in ownership of the Chalet Village Water System with the sale, but the source of the Chalet Village Water did not change nor was it impacted. The spring located on the triangular lot was still to be the source of water for the subdivision, and the deed required that the owner continue to supply the subdivision from this source. Mr. Giorgetti's creation and sale of the triangular lot was not a substantial change to a pre-existing subdivision.

b) Is Commercial Use of Overflow From the Spring Supplying Potable Water to the Pre-Existing Subdivision a Substantial Change?

The remaining question is whether the use of the overflow from the spring for bulk water withdrawal is a substantial change to a pre-existing subdivision. Under Criterion 2, a presumption that a sufficient supply of potable water is available exists where the state has granted a public water system operating permit. Rule 19 (E)(3)(e). There is a presumption under the rules that there is no significant impact under Criterion 2, and having obtained this and other permits from the State, Mr. Colton has created a rebuttable presumption. No evidence has been presented to rebut that presumption. In a decade or more of the bulk withdrawal operation, there is no indication that the bulk withdrawal of overflow water from this spring has adversely affected either Criterion 2 or even Criterion 3. There are no reports of the Chalet Village Water System's failure to adequately serve the Chalet Village subdivision, nor are there reports of the use of the Chalet Village Water System for bulk withdrawal has had any effect on neighboring water supplies. There is adequate water to supply the subdivision, and there is no evidence of an unreasonable burden to any other water supply. The use of the spring for bulk withdrawal is not a substantial change to a pre-existing subdivision.

Additionally, in December of 1995, Mr. Colton sought and obtained a jurisdictional opinion concerning his operation. In that request, Mr. Colton supplied much of the history of his property ownership including maps and deeds. This district office issued a jurisdictional opinion based on the information to determine that his property was not under Act 250 jurisdiction because the commercial construction he was conducting was on fewer than 10 acres in a town with permanent zoning and subdivision bylaws. While that opinion did not address the question of a change to a pre-existing subdivision, the information was available to the coordinator, and it was obvious that the original piece of property was part of a pre-existing subdivision. This office concluded that the project was not under Act 250 jurisdiction.

Conclusion:

The creation and sale of the 1977 lot was not a substantial change to a pre-existing development nor was the use of the overflow from the Chalet Water System spring for bulk water withdrawal. Mr. Colton was required by deed to provide water to the Chalet Water System prior to any other use of the water. Furthermore, even if Criterion 3 is also considered, no substantial change exists. There is no evidence of a negative effect on local water supplies, streams or rivers.

Do not hesitate to contact me at (802)885-8842 if you have questions.

Sincerely,

Boolie Sluka/s/
Boolie Sluka
Assistant District Coordinator

cc: Certificate of Service

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3.

Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of $225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Drawer 20, Montpelier, VT 05620-3201, in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The Environmental Court mailing address is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)